

REMARKS

Claims 1-20 are pending in this Application. Claims 1, 7 and 13 are independent claims.

Restriction Requirement

The Examiner has imposed a Restriction Requirement and requested that the Applicant elect one of the following identified groups of claims for prosecution in the present application.

- Group I:** including claims 1-6 and 16-19, drawn to a method of producing a can; or
- Group II:** including claims 7-12 and 20, drawn to a can body; or
- Group III:** including claims 13-15, drawn to a can body.

In response to the Restriction Requirement, Applicant elects, with traverse, to prosecute Group I, including claims 1-6 and 16-19. Applicant specifically reserves the right to file a divisional application directed to non-elected claims 7-15 and 20.

LACK OF UNITY OF INVENTION HAS NOT BEEN DEMONSTRATED

Applicant respectfully asserts that the Restriction Requirement is improper as it does not comply with the rules of practice for PCT National stage applications, because the appropriate unity of invention standards have not been properly applied. In PCT National Stage Applications, the Examiner may issue a restriction type requirement if no unity of invention exists. However, the Examiner must state why

there is no "single general inventive concept." (see M.P.E.P. §1893.03(d)). Thus, a single Application may include one invention or more than one invention if the inventions are "linked as to form a single general inventive concept." Id. If multiple inventions are included in the application, they are deemed to be linked if there exists a "technical relationship among the inventions that involve at least one common or corresponding special technical feature." Id.

In restricting the present claims, the Examiner alleges that the Groups of claims "do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The groups are related only by the fact that they involve the use of a film or foil." Thus, rather than providing a reason why there is no unity of invention, the Examiner demonstrates that there is unity of invention in that each of the groups share a common special technical feature.

Moreover, in restricting the claims, the Examiner alleges that the method doesn't require the device or have to make the finished product. The device can perform other methods and make other products. The product can be made by a different method or by a different device."

Thus, although the Examiner recognizes that the present application requires the application of the rules regarding Unity of Invention practice, the Examiner appears to apply the U.S. rules of restriction practice under MPEP §806.05 rather than under Unity of Invention.

Finally, according to the rules of Unity of Invention, an international or a national stage application containing claims to different categories of invention will be

considered to have unity of invention if the claims are drawn to one of the following combinations of categories:

- 1- a product and a process specially adapted for the manufacture of the product; or
- 2- a product and process for use of the product; or
- 3- a product, a process specially adapted for the manufacture of the product and the use of the product; or
- 4- a process and an apparatus or means specially designed for carrying out the process; or
- 5- a product, a process specially adapted for the manufacture of the product, and an apparatus or means specifically designed for carrying out the process.

As the alleged groups of claims relate to at least one of the aforementioned categories, specifically defined as having unity of invention, the restriction of the claims is incorrect and should be withdrawn (see 37 C.F.R. §1.475(b)).

For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, PLC

By  _____

John W. Fitzpatrick, Reg. No. 41,018
P.O. Box 8910
Reston, VA 20195
(703) 668-8000

DJD/JWF/kas